

January 4, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0401130**

TORINDA RAYE
Code Enforcement Appeal

Location: 14120 – 80th Avenue Northeast

Appellant: **Torinda Raye**
14120 – 80th Avenue Northeast
Bothell, Washington 98011
Telephone: (425) 814-4640

King County: Department of Development and Environmental Services,
represented by **Erroll Garnett**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7102
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal, with extended compliance schedule

EXAMINER PROCEEDINGS:

Hearing Opened:	December 20, 2005
Hearing Closed:	December 20, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On September 30, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Torinda Anderson (her prior name; Torinda Raye is now her name) and the subject property, charging violation of county code by construction of an accessory structure (a shed) which was stated to be attached to the principal residence, without required permits, inspections and approvals and within the required structural setback from the side property line.

The Notice and Order required application for and obtainment of the required permits, inspections and approvals by November 30, 2005 and removal of the portion of the structure that is within the required 5-foot setback within 30 days of the date of permit issuance. Alternatively, the Notice and Order required a demolition permit be obtained and the non-permitted construction demolished and the demolition debris removed from the premises by November 30, 2005. (At hearing, DDES noted the possibility of a setback variance to allow the violating structural parts to intrude within the normal setback area, but noted that such a variance would have to conform to the applicable code criteria for variance approval, the application fee is significant, and the variance decision would be subject to appeal. Another possible remedy would be a legislative amendment to the setback regulations, but that would be a lengthy process with no assurance of success.)

2. Appellant Raye submitted a timely appeal from the Notice and Order, claiming that the shed is actually a detached structure; is exempt from building permit requirements by virtue of its footprint size (square footage of ground coverage); and the setback requirements do not apply to a detached accessory shed.
3. The shed was constructed by a prior owner (George Miller), who purchased the property in mid-to-late 1998 and constructed the shed in 1999 or 2000. The property was sold to Ms. Raye in 2001 or 2002. Ms. Raye is therefore an innocent purchaser with respect to any violation associated with actual construction/installation of the shed.
4. The shed is actually detached (with a narrow gap between it and the principal residence) and essentially has been wedged between the residence and the Raye fence on or near the side property line. The shed structure is having the effect of pushing at least a portion of the fence over toward the neighboring property. (The neighbor (David Tall) asserts that the shed actually encroaches onto his property four to six inches. Any encroachment of the shed onto other property is not at issue in the present Notice and Order appeal proceeding, and therefore is not under the authority of the Examiner in this matter.
5. Ms. Raye also claims that the neighbor and in effect the County are harassing her about her shed, since there are other similarly placed sheds on other properties in the area.
6. The preponderance of the evidence in the record supports a finding that the subject shed is of a size that does not require a formal building permit under county code. However, the placement of a shed as to its location is still regulated by code. The preponderance of the evidence also supports a finding that the shed is located within the side yard setback area, which is a violation of KCC 21A.12.030. Ms. Raye's argument that accessory structures such as sheds are exempted from the setback requirement is unpersuasive and has not been shown to have any basis in the

law. (An 18-inch maximum roof overhang may intrude into the setback area, but no wall portion of a structure [KCC 21A.12.170(D)]; the net effect is that there must be a minimum of a 3.5 foot clear area between the property line and any structural components whatsoever.)

7. In summary, the preponderance of the evidence supports a finding that the Notice and Order is correct in its charge of violation of the zoning code setback regulations.

CONCLUSIONS:

1. The Appellant's argument that it is unfair for the County to engage in code enforcement on the subject property when other properties in the area have similar violations is an equity issue over which the Examiner has no authority. It is tantamount to a common law claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand because of unequal treatment. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law (a court of general jurisdiction, *i.e.*, Superior Court).
2. Regardless of any innocent purchaser qualification such as Ms. Raye has in this case, since she purchased the property with the shed already constructed, a property owner is still responsible for abating code violations. [KCC 23.02.130(B)] In other words, an innocent purchaser may not be liable for committing the original violation, and therefore is not subject to penalties for the original violation, but still is responsible for correcting the violation. A property purchaser essentially inherits any code violations on assuming ownership of a property.
3. As the subject shed was placed in the required structural setback area from the side property line in violation of county code, the violation charge of the Notice and Order with respect to setback violation is correct and is sustained on appeal. Likewise, the need for inspection and approval as to placement was violated and is also sustained. The charge of the Notice and Order of failing to obtain a building permit is not sustained since the evidence in the record shows that a building permit is not required due to the square footage footprint of the shed.
4. As the deadlines for compliance have been made moot by the time period taken up by the appeal, the Examiner shall impose new correction deadlines.

DECISION:

The appeal is **SUSTAINED** with respect to the Notice and Order charge of violation by failure to obtain a building permit, but the appeal is **DENIED** with respect to all of the other charges in the Notice and Order, with the exception that the requirements and deadlines for regulatory compliance are revised and extended as stated in the following Order.

ORDER:

1. Apply for and obtain the required inspections and approvals for a reduced area shed meeting the setback requirements *by no later than* **March 31, 2006**, with the portion of the structure that is out of compliance with the setback regulations **removed within 60 days** of county approval of such application. (If the county review process does not require a formal application for inspection and approval but merely removal of the offending portions of the shed structure to

comply with the setback, with follow-up inspection and approval to be requested by the Appellant, then the offending portion of the structure must be removed *by no later than* **May 31, 2006** and the Appellant shall diligently request follow-up inspection and documented approval of setback conformity no later than one week after such removal.

2. Alternatively, the Appellant may apply for and obtain a setback variance, with a *complete* application to be submitted *by no later than* **March 31, 2006**, and shall meet all deadlines for DDES-requested supplemental information associated with the application.
3. Alternatively, and also in the event that a requested variance is denied, the Appellant shall obtain a demolition permit and remove/demolish the non-permitted construction and remove the demolition debris from the premises *by no later than* **March 31, 2006**, or **60 days after denial of a requested variance**, respectively.
4. Alternatively, the shed may be relocated onsite so that it conforms to all zoning and other regulatory requirements, particularly setback and building separation requirements.
5. No penalties shall be assessed against Appellant Raye or the cited property for the subject violations. If the above corrective measures are not met, however, DDES may assess applicable abatement costs against the Appellant and the respective property under KCC 23.02.130(B).

ORDERED this 4th day of January, 2006.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 4th day of January, 2006, via certified mail to the following:

Torinda Raye
14120 – 80th Avenue Northeast
Bothell, Washington 98011

TRANSMITTED this 4th day of January, 2006, to the following parties and interested persons of record:

Torinda Raye
14120 - 80th Ave. NE
Bothell WA 98011

DDES, Code Enf. Billing
MS OAK-DE-0100

Patricia Malone
DDES/LUSD
MS OAK-DE-0100

David Tall
14112 - 80th Ave. NE
Bothell WA 98011

Elizabeth Deraitus
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Jeri Breazeal
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Erroll Garnett
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Toya Williams
BSD/INT
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE DECEMBER 20, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0401130.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Erroll Garnett, representing the Department; Torinda Raye, the Appellant and David Tall.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner |
| Exhibit No. 2 | Copy of the Notice & Order issued September 30, 2005 |
| Exhibit No. 3 | Copy of the Appeal received October 18, 2005 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | Violation letter sent December 20, 2004 |
| Exhibit No. 6 | Violation letter sent February 15, 2005 |
| Exhibit No. 7 | Copy of King County Code 21A.12.170 – Setbacks – Projections and structures allowed |
| Exhibit No. 8 | Photographs of the storage shed taken February 15, 2005 |
| Exhibit No. 9 | Photographs of other storage sheds in Ms. Raye's neighborhood, taken by Torinda Raye |

PTD:gao
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